1941

File No. O L R C Bom/41

Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Opinions under the Bombay Land Revenue Code

D 60 F

File No. O. L R C Bom./41

Std. Sectt. Slip 24 B e

98-A

CONTENTS

Legal Department File No.1. O.L.R.C. Bom./41

Serial No.	Compilation No.	Subject	Pages
1.	U.R.t. the R.D. No.310 dated the 15th Jan.1941	B. Land Revenue Code s. 37 (1) Lands:-Village of kathlal Tal.Kapadwanj acqired by Govt. for housing Back-ward classes. Disposal of	1
2.	to U.R.R.D. 1272 dated the 11th Feb.1941	S.61 Kuran Lands Belgaum S.No.129 of forward Janwad .Tal. Chikodi.liability t pay assessmental fine in absence of any documentary evidence regarding the possession of-	3-6
3.	U.R.toR.D.No.1714 dated the 25th Feb.1941	S.67 Whether the Collectors have power to prohibit access to new approach roads, new existing roads and bye-passes on existing roads.	7
4.	U.R.to R.D.No.2328 dated the 15th March1941	Sale of certain lands in Dist.Dhanbar on concession terms. Forfeiture of the land for breach of condition No.2 of Agr.	9-11
5.	U.R.toR.D.No3026 dated the 3rd April1941	Rules Under: Rule36(1)(a) of Resumption of land for failure of trustees to con-struct a dispensary building on land.	13
6.	U.R.toR.D.no.3987 dated the 3rdMay 1941	Whether Govt.can charge non-agricultural assessment on the land at the current rates.	15-16
7.	U.R.toR.D.No.5185 dated the 9thJune1941	S.51(1) Disposing of the land to the plaintiff whether it would be possible to impose con-tionens at the time of such disposal of land. Easement rights acquired by the third party in res-pect of the land,	17-18
8.	U.R.toR.D.No.4724		

Ehw 23/5/56

Dbb/ 24/5

1	2	3	4
8.	U.R.toR.D.No.4724 dated 23rdMay 1941	S.S.119 and 121 Whether Govt. can modify an order passed by Collector under	19-21
9.	U.R.toR.D.No.4547 dated the 19thMay 1941.	Suburban Scheme No.XVII Kurla plots at- Whether the conditions and terms of the contract permit the purchasers to build-over one-half of the area of their plots.	23-25
10.	U.R.toR.D.No.5493 dated the 20th June 1941.	Transfer of lands from one village to another	27-28
11.	U.R.to R.D.No.4960 dated the 30th May 1941	S.211 power of Govt to revise or review its own order	29-30
12.	U.R.toR.D.No.6096 dated the 14th July 1941.	Lands:Belgaum Village Ainapur, Tal.Athni, granted to one Shri. Arlikatti by Govt. Whether Govt.can resume the lands,and. whether the jurisdiction in revising the Collector's order of 1939lies with the Govt.or the B.R.T.	31-35
13.	U.R.toR.D.No. 5333 dated the 23rdJune 1941.	S.211 cancellation of lease under-	37-38
14.	U.R.toR,D.No.8459 dated the 26th Sept. 1941	S.37 r.w. Rule 66 L.R.Rules Action for unauthorised removal of sand,by the contractors of Sachinstate,from the bed of river Tapti.	39
15.	U.R.toR.D.No8462 dated the 26th Sept. 1941.	S.135(I) Whether it is obligatory on a superior holder to produce extracts from the record of rights in support of his claim	41.
16.	U.R.toR.D.No6618 dated the 28thJuly 1941	Fixing period in respect of the leases continued "Till relinquished" and "as long and possession is retained"	43
17.	U.R.tp R.D.No.9946 dated the 19th Nove 1941.	Whether Inamdars who executed agreements before coming into force of the B.ActXX of 1939can claim to have revision settlement operations continued according to the B.L.R.-Code as it stood before it was amended by B.Act.XX of 1939.	45-49
18.	U,R.toR.D.No.9962 dated the. 19thNOV. 1941.	Recovery of arrears of rent as arrears of land revenue	51

1	2	3	4
19	U.R.to the Adv.Genl. no 10826dated the 15thDec.1941 -Adv.Genls' opinio No.10of 1941 dated 20-12-41 -U.R.to R.D.No.11067 dated the 22nd Dec. 1941.	Abutting on Kalupur Relief Road, surplus lands consisting of building sides held revemmmue free acquired by Govt. and lagn,Act. Whether purchasers of plots would be liable to pay in a assessment to Govt. Whether there is any legal objection to the conformation of sale of Plots by the Commissioner 4/5 48(2), Bom.Municipal&y Boroughs Act,1925;free of assessment, and payment assessment to Govt. by the mumay Municipality . if it becomes subsequently leviable.	53-73

M.R.D.
M/4/56

Office of the R.L.A.

The piece of land measuring 2 acres and 9 gunthas in the Village of Kathlal, Taluka Kapadwanj which has been acquired by Government for the housing of Backward Classes has now vested absolutely in the Crown under section 16 of the Land Acquisition Act, 1894. It has become Government land and consequently it would be competent for the Collector subject to the orders of the Commissioner to dispose of it under section 37(1) of the Land Revenue Code. In the absence of a specific authority from Government in this behalf or in the absence of sanction of the Provincial Government, the Backward Class Officer will have no power to dispose of the land although the Collector may(and ordinarily would) consult him. The view taken by the Collector and the Commissioner (at pages 5 and 11 respectively) is correct,

Sd/-

Remembrancer of Legal Affairs.

U.R. to the R,D.,No.2 310 dated the 15th January 1941.

M.R.D.
24/4/56

11001
21-12-40.

Submitted with the reference to Secy. R.D.'s note dated 19th December 1940 at page 16 ante.

2. S.No.129 of Janwad in the Chikodi taluka of the Belgaum district is a kuran land belonging to Govt. It is leased from time to time for a period of ffve years to the Panchas selected. Lst time it was leased out for five years in the year 1931 to the Panchas then selected on payment of a fixed sum of Rs.315/-. It appears that the Collector by his order dated 30th Aug. 1934(P.88 of File I below) had cancelled the lease for breach of the conditions. But by his subseqent order dated 11th April 1935(P.107 of file I) the Collr. cancelled his previous order dated 30th August 1934 and the old Panchas were continued tentatively, as a trial for one year more. Although the period of the lease expired on 31st March 1936 the old Panchas remained in possession of the land for the period shown below during the year 1936-37--

	Parties.	Period of Possession.
I	old panchas	1-4-1936 to 20-12-36 and 19-3-37 to 25-3-37
II	new panchas	20-12-36 to 25-1-37.
III	Village Officers	5-1-37 to 19-3-37.

3. On 22nd October 1936 the Assistant Collector, N.D., Belgaum passed an order (P.163of file I) that the land be put in possession of the new Panchas approved by him on similar conditions. On the appeal

by the panchas the Collector issued a stay order dated the 12th November 1936 (P.166 of fileI). In this order the Collr. observes that if the old panchas are in possession till now as alleged they should be continued to be in possession for this year for the amount offered by the new panchas and that it is now too late to disturb the possession of the old panchas. On 19th Dec.1936 the Collr, rejected the appeal and upheld the rodèrs passed by the Astt. Collr. (vide P.186of file I.) The possession of the land was accordingly given to the new pahchas --- on 20th December 1936.

4. The old panchas then appealed to the Commissioner and requested for stay order. It appears from para.4of Collr's letter dated 9th January 1939 at P.3 ante that the stay order was granted by the Commr. But the Mamlatdar reported that the stay order cannot be executed as the new panchas have beenplaced in possession of the land on 20th Dec. 1936. On 19th March 1937 the Collr. visited the village and thought it advisable to put the Old Panchas in possession of the land for 1936-37 and to recover the rent from them. He issued orders accordingly to the village officers. On 26th May 1937 the Commr. rejected the appeal (P.201of file I) with the remark that as the Collr. has given the land in the possession of the appellants for the year 1936-37 no further action seems necessary.

5. The question raised for the consideration of the R.L.A. is whether in the absence of any document evidencing their lawful occupation or

payment of rent agreed to by the new pahchas, the old panchas are liable to pay assessment and fine under section 61 of the Bombay Land Revenue Code, 1879 (Bom.V of 1879) for their possession of the Kuran land during the year 1936-37.

6. It is true that the lease of the old Panchas expired on the 31st March 1936. But under the principle laid down in sec. 116 of the Transfer of Property Act, 1882 (IV of 1882) if a lessee remains in possession of property after the determination of the lease and the lessor assents to his continuing in possession the lease is renewed. (Firstly) in this case the old panchas continued to remain in possession from 1st April 1936 to 20th December 1936. In his stay order dated 12th November 1936 the Collector observed that they should be continued in possession for that year for the amount offered by the new panchas The possession of the land by the old panchas up to 20th December canot therefore to be held to be unauthorized on 19th March 1937 the old panchas were actually put into possession of the land under Collector's order. In rejecting their appeal the commissioner also recognized the possession of the land with the old panchas for the year 1936-37. Under these cicumstances the old panchas can not be have been held to in unauthorized occupation of the land within the meaning of section 61 of the land Revenue Code. The causes suggested by D.S.F.D. is therefore not legally feasible.(~~of Meenakshi V. Chidambaram 23 M.L.S.~~

(cf Meenakshi V.Chidamlearam 23 M.L.J. 119,15 I.C.911, Mitra's T.P.Act P.609)

I agree. Reply may be on the ~~xxxxxxx~~ lines of para 6 of Mr. Dhotre's note.

Sd/-
3/2

D.S. Reply may be as at A A in Mr. Dhotre's note as amended.

Sd/-
6/2

R.L.A.

Sd/-
7/2

U.R. to R.D.No.1272, dated the 11th February 1941.

M.R.D.
24/4/5

Office of the R.L.A.

The question referred to the Remembrancer of Legal Affairs for consideration is whether the Collector have power to prohibit access to new approach roads, new roads and bye-passes on existing roads.

2. There is no provision in the Land Revenue Code empowering a Collector to prevent access to any road. Under section 65 no agricultural land can be used for a non-agricultural prupose without the permission of the Collector. Section 67 empowers the Collector to grant such permission on such terms and conditions as may be prescribed by him subject to any rules made by the Provincial Government. It is true that the powers of the Collector under section 67 are very wide. Thus it will be possible for the Collector to impose conditions as regards the portion of area of the land which may be built upon and the area or portion of the land which may be kept open. But it will not be possible for the Collector to impose a condition that no person shall have access from such land to any road adjoining or near such land. The reply to the above question is therefore in the negative. The view taken by the Commissioners, C.D.and N.D. on this point is correct.

2. The statement in paragraph 4 of draft reply at PP.43-44 that the Collector cannot prohibit building operations is not quite correct. Under section 67the Collector can impose conditions as regards the

~~conditions as regards the~~ portion or area of land which may not be built upon.

Sd/-

Remembrancer of Legal Affairs.

U.R. to R.D.,No.1714 dated the 25th February 1941.

M.R.M.qx
24/4/56

Office of the R.L.A.

By G.R.(R.D.) No. 3821/33, dated the 11th April 1935 Government sanctioned certain proposals of the Collector of Dhawar as regards the conditions on which the land was to be given to Mr. Shashital. The considitions on which the land was actually granted to Mr. Shashital are contained in the argeement which he executed after the issue of the above G.R. It does not appear that any sanad had been issued in this case. Consequently the the terms and conditions of the grant will have to be ascertained by reference to the agreement executed by Mr. Shashital. Condtion No.6 of the agreement provides that in the event of breach of any of the above condtions i.e. condtions 1 to 5 or failure to impart training to the lads concerned to the satisfaction of the Committee mentioned above or if at any time Mr. Shashital or his successor wishe to terminate the system of training of lads the land may be sold to him or his successor in title for Rs.2,500 per acre and he or his successor title fee may be charged Rs. 20 the normal assessment per acre. The words used are "may be" and and this shows that it is in the discretion of Government to sell or refuse to sell the land on the concession terms mentioned in condtion No.6 on the happening of any of the contingencies mentioned in this condtion. It is true that in the Government Resolution referred to above, Government had sanctioned the proposal of the Collector that

~~proposal of the Collecter that~~ on the happening of any of these ~~concession terms.—But~~ events, the land "shall" be sold to Mr. Shashital on these concession terms. But it does not appear from the papers that any such assurance was actually given to Mr. Shashital after the issue of the G.R. From the Mamlatdar's report dated 12th July 1937 (P.147 of the Collector's file No.I) it appears that after the issue of the G.R. the Mamlatdar merely enquired from Mr. Shashital whether he was willing to have the site on nominal occupancy price of Rs.5 subject to the condtion that the plot should be used for the purpose of training boys who have been detained in the Borstal School, or whether he wanted to have the site on full occupancy price of Rs.2,500. The agreement was executed three months later on the 23rd October 1935. This uses the words "may be" in condtion No.6. Consequently, Government is not legally bound to sell the land to Mr. Shashital on the concession terms mentioned in condtion No.6.

2. The next question for consideration is whether the land can be forfeited for breach of condtion No.2. In his letter dated 2nd December 1940, the Collector states that in view of condtion No.6, it is doubtful whether the land can be forfeited for breach of condtions Nos.1 to 5. Condtion No.8 provides that the necessary buildings shall be erected on the site within three years from the grant. The necessary buildings are buildings referred to in condtion No.2. If therefore as suggested by the Collector the land could not be forfeited for breach pf condtion No.2, it will not be possible to forfeit it for breach of condtion No.8.also. Consequently, if the view taken by the Collecor that the land could not be forfeited under condtion No.10 for breach of any of the condtions No.1 to 5 be correct, the only

the only condition for breach of which the land mox could be so forfeited will be condtion No.7, This could not have been intended. The words used in condtion No.10 are "if I contravene any of the foregoing condtions." The foregoing condtions are obviously conditions 1to 9. Cbhsequently, in my opinion, it will be possible to forfeit the land for breach of condtion No.2. read with condtion No.8.

Sd/- .
12/3

Remembrancer of Legal Affairs.

U.R. to the R.D.,No2328 dated the 15th March 1941.

R.L.A.'s Office.

Rule 36(1)(a) of the Land Revenue Rules,1921, as amended by G.N.,R.D.,No 3783Ø33,dated the 11th August 1939,provides that every grant under rule 32or 34 shall be made subject to the condtion that the land with all fixtures and structures thereon shall be liable to be resumed by Government if it is not used for the specific purpose or purposes for which it is granted by such date as the Collector may fix in this behalf. The rule does not give power to Government to resume such land in the event of its not being used for the purpose for which it has been granted, if no such condition is attached to the grant. Moreover the grant in this case was made before the rule 36 was amended on the above lines. The R.L.A.'s ~~xpt~~ Opinions No. 5474,dated the 30th June 1938 and No. 6417,dated the 13th August 1938 still hold good and it would not be competent for Government to resume the land owing to the failure of the trustees to construct a dispensary building on the land.

Sd/-
2/4

Remembrancer of Legal Affairs.

M.R.D.
24/4/56

U.R. to R.D. No.3026,dated the 3rd April 1941.

Office of the R.L.A.

It appears that Government proposes to sell the occupancy of the land to Mr. Shashital for Rs,2,500 under condition No.6 of the agreement. The question raised for consideration of the R.L.A. is whether Government can charge non-agricultural assessment on the land at the current rate or whether Government is bound to charge Rs. 20 only and in the latter case for whatpperiod thexassessment cannot be revised.

2. Condition No.1 of the agreement provides for payment of non-agricultural assessment of Rs.10as long as the plot is used for pruposes of training the boys and thereafter for payment of such assessment for such further periods as may from time to time be fixed by lawful authority. Condition No.6 provides that in the event of breach of any of the above conditions or failure to impart training to boys the grantee may be charged Rs.20 (the normal assessment) per acre. It appears from the Collector's letter to the Commissioner at page 31 ante that in the year in which the grant was made the plot in question fell in zone III and according to the then prevailing standard rates the normal assessment was Rs.20 per acre. Reading conditions 1 and 6 together and the words "normal assessment" in the bracket in condtion No.6, it becom clear that the intention was to charge the normal or standard assessment in the event of the failure of the scheme or breach of any of the condtions 1 to 5. Conditionm 6 refers to the assessment of Rs.20 per acre because it was then the standard assessment per acre. As the land is no longer used for the purpose of training boys, it has now become liable to pay such assessment for such period as may from time to time be fixed

by the Collector. It appears that the standard rates in that locality have been revised from 1st August 1938 and the plot has not been placed in Zone I and the non-agricultural assessment according to the existing rates comes to Rs.125(see the Collector's letter at page 31 ante). Consequently it would be competent for Government to assess the plot to a non-agricultural assessment of Rs.125 according to the present standard rates.

Sd/-
2/5

Remembrancer of Legal Affairs.

U.R. to R.D. No.3987, dated the 3-5-1941.

M.R.D.
25/4/56

Office of the R.L.A.

The decree in this case requires that the land should be offered to the plaintiff on payment of th the usual occupancy price. It is clear from the the terms of the decree as well as the correspondence which took place before the suit was compromised that the intention was that the land should either be sold to the planintiff or leased to him for a long term. Subject to this, there is no objection to disposing of the land to the plaintiff under rule 51(1)of the Land Revenue Rules as suggested by the Commissioner.

2. The next question for consideration is whether it would be possible to impose conditions at the time of disposing of the land to plaintiff. The decree is silent on this point. But the ordinary interpretation of the terms of the decree, in my opinion,would be that the land should be offered to the plaintiff on the conditions on which such lands are usually disposed of by Government. Consequently, it would be poxsible to impose such conditions as are ordinarily imposed while disposing of other similar lands.

3. As regards easement rights acquired by the third parties, the view taken by the Commissioner that Government cannot dispose of what it itself has not got is correct. It is therefore not legally necessary to spefiey such rights in the agreement, lease or other document which may be executed in this case. As,however, a formal enquiry under

~~formal enquiry under~~ section 37(2) of the Land Revenue Code has been held in this case by the City Survey officer and in order to ~~amim~~ avoid litigation against Government by the third parties concerned, it ~~would~~ would be desirable to state clearly at the time of granting land to the plaintiff that the grant does not in any way affect any rights which any thrid party may have acquired in respect of this land.

Sd/-
7/6

Remembrancer of Legal Affairs.

U.R. to R.D.,No.5185 , dated the 9th June 1941.

M.R.D.
25/4/56

R.L.A.'s Office.

The question raised for consideration is whether Government can modify an order passed the Collector under sections 119 and 121 of th Bombay Land Revenue Code, 1879, Paragraph 2 of section 119 provides inter alia that if at any time after the completion of a survery a dispu arise concerning the boundary of any survey number or a sub-division thereof it shall b determined by the Collector. Section 120 pro vides that the settlement of a boundary as abo said shall be determinative or the proper posi of the boundary line or boundary marks. But t provision that the decision of the Collector i determinative only ousts the jurisdiction of Civil Courts to determine the position of the boundary marks(see R.L.A.'s opinion No.4174, dated the 15th April 1939) and does not affec the question of appeals. Section 203 of the Bombay Land Revenue Code provides that in the absence of any express provision in the code, or of any law for the time being in force to t contrary, an appeal lies from any order or dec sion of a revenue officer under the Code or under any other law for the time being in force whether such decision or order has been passed on appeal from a subordinate officer's decisio or not. There is no express provision of any law prohibiting an appeal against an order und section 119 and as such order has not been dec ed to be final,

21

section 212, paragraph 1, cannot operate to bar appeals. Consequently an appeal lies to Government in this case under section 204 of the Bombay Land revenue Code. Moreover under section 211 of the Code Government has power to revise the order, and this power of revision would not be affected even on the assumption that the order was not appealable (see para. 2 of section 212).

2. As the appellants have obtained a decree against Government regarding their rights to the Hom Maidan, it would be advisable that the present appeal should be considered on merits. For if the Collector's order in 1939 affects any rights of the appellants under that decree, Government is likely to be involved in further litigation. While calling for information as proposed in paragraph 3 of the R.D. note, the R.D. may therefore call for a certified copy of the decree in Civil Suit No. 4 of 1913(as amended in 1928) together with a copy of the plan referred to therein and obtain a report from the Collector whether his order of 1939 interferes with the appellant's rights under the said decree.

Sd/-
22/5

Remembrancer of Legal Affairs.

U.R. to R.D., No.472 dated 23-5-1941.

M.R.
25/4

Office of the R.L.A.

Nine plots, most of which were partially built over by Government, known as staff quarters in the Suburban scheme No.XVII Kurla were agreed to be sold by Government to different purchasers (see G.R.R.D.No.6003/28dated the 6th February 1931,for the sale of plots 2to8.) The contracts for sale came off by Government accepting the pruchasers' offers for the plots. In making the offers, the purchasers agreed to certain conditions of the HH form which they signed: see para.12 of the letter of the Land Manager Development Department.(Mr. Doctor) underlying the said G.R.The offers were made by signed application to Government as seen from pages 43, 47,and 51 ante, as well as pages 9,21 etc.of R.D. File No.6003/28-II and pages 3,9,14,22,48 of R.D. File 6003/-I. The applications recite inter alia that the signatories(1)"agree not to build any more on the area if disallowed by municipal rules and by-laws",and(2)"agree to the conditions in the accompanying form HH which I have signed, subject to the proviso that the land revenue should not be in excess of Re.1 for each plot". The applications are accompained by signed conditions in form HH accordingly; see papers at slip B. Although these forms are not fully filled in, the conditions under schedule II thereunder are posted up with modifications where necessary and these are signed by the applicants. the

P.T.O.

The signed conditions in these schedules under form HH are therefore part of the concluded agreement of sales by virtue of their incorporation in the offer applications as above. The purchasers are thus bound by the conditions they signed, and will not be allowed to very them by adducing any oral evidence of any representations made, as they allege, by Mr. Doctor the Land Manager. Section 91 of the Evidence Act precludes all oral evidence as to the terms of the contract in this case.

2. The question now raised for R.L.A.'s decision is whether the conditions and terms of the contract permit the purchasers to build over one-half of the area of their plots. The

answer

MR.B

is in the negative.

3. It appears that the Kurla Municipal By-la permit construction on one-half of the area of the plot. In addition to the agreement to abid by these by-laws, the purchasers have agreed as seen above to the the conditions they signed under form HH. These conditions vary for the various plots as follows: "The present open space is to be left open to the sky except a portion to be covered by a privy" in case of plots 2,3,4,5,6,7. "Threefourths of the plot to be kept open to the sky" in case of plots 1,8,9. Actually as seen from statement A accompanying G.R.R.D.No.6008/28dated the 6th February 1931,pl I had extr ---- (in excess of ¼)built on at the date of the agreement, while plots 2,3,4and 7 ha their build area under one-fourth. The further concession made to the pruchasers by G.M.R.D.No. 6008½G/28, dated the 22nd March 1933 was to perm plot 1 to retain the excess area built over and permit plots2,3,4,and 7 to build up to one-fourt of the area. The purchasers could not have clai this concessionx as of right, much less can they claim to build over one-half of the area, as the are bound by the written terms and conditions of their offers. The two recitals in their offe referred to above are not mutually inconsistent, but supplementary. The view taken by Secretary, Revenue Department at page 58 ante and at page 8 of R.D.file No.6008/28-I is correct. In fact eve

P.T.O

~~In fact even~~ when no further area can be built over, as in case of plots 1,5 and 6, the condition that further constucion must abide by municipal by -laws is not purposeless, seeing that construction can even proceed vertically over the present built up area. The contention of the purchasers that they possess ax right to build up to one-half of the area under the agreement has thus no substance.

sd/-
15/5

Remembrancer of Legal Affairs.

U.R. to R.D. No.4547 dated the 19th May 1941.

Submitted.

2. It appears that the Collr. of Dharwar, in his order No.L.N.D.1599, dated 18-8-1939, ordered the transfer of 14 gunthas of the abandoned nalla bed from the Hatalgari Village to Sambhapur village in the Gadag Taluka. As the said order was considered to be ultra vires of the Collr., the present Collr. and the Commissioner, S.D. requested Govt. to sanction the transfer of the said lands. The R.D. is of the viewth that though the issue of oders by Govt. transferring lands from one village to another would be illegal and in contravention of the R.L.A.'s opinon No.540, dated 15-1-1940, there would be no objection if such transfers are effected by G.Rs. which can be quoted as authorities uhtil the amendment of the Bombay Land Revenue Code is effected. The R.D. has shown the G.R. sanctioning transfer of lands to the R.L.A. before issue.

3. It does not appear that any definite question has been raised in these papers for the opinion of the R.L.A. In his opinion No.540, dated 15-1-1940, printed in the preamble to the G.R.R.D.No.2286/39 dated 14-2-1940, the R.L.A. has held that there is no provison in the Bombay Land Revenue Code, 1879 empowering Govt. to transfer lands from one village to another. But from para. 2 of the said G.R. it appears that the R.D. sanctioned the transfer of lands by a G.R. instead of by a notification so that it may be quoted as authority for transfer until the amendment of the Bombay

until the amendment of the Bombay Land Revenue Code,1879,is effected(P.26 of R.D.file 2286/39-E). In view of this definite opinion given by the R.L.A. after reviewing all the previous opinions, it does not appear that the transfer of 14 gunthas of the abandoned nalla bed from the Hatalgeri village to the Sambhapur village in the Gadag taluka of the Dharwar District whether effected by issue of a notification or by issue of a G.R.would be legal within the meaning of the said opinion. But since the R.D. has decided to effect such transfers until the amendment to the Bombay Land Revenue Code is taken up and as the Commissioner, S.D. considers that such a transfer would be desirable in in this case no action appears necessary on these papers and the papers may be seen and returned.

Sd/-
11/6

AmS. The transfer of lands from one village to another over by a G.R.would be equally illegal. If it is necessary on an administrative ground,Govt.may do so. Papers maybe seen and returned.

R.R. 16/6

DM.S. As at A A

Sd/-
17/6

R.L.A. Sd/-
18/6

Office of the R.L.A.
B.-B

U.R. to R.D. No.5493, dated the 20th June,1941. M.R.R.
25/4/6

R.L.A.'s Office.

Section 211 of the Bombay Land Revenue Code, 1879, provides inter alias that Government may call for and examine the record and proceedings of any subordinate revenue officer (not inferior in rank to certain officers named in the section for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer and if in any case, it shall appear to Government that any decision or order or proceedings so called for should be modified, annulled or reversed, it may pass such order thereon as it deems fit. There is no other provision in the Bombay Land Revenue Code expressly giving power to Government to revise or review its own order made under section 211. In R.L.A. R.L.A.'s opinion No.2420, dated the 17th March 1938, it was however held that Government is possessed of the power of reviewing and revising its own decision and that this power would seem to be implied in the provisions of section 211 of the Bombay Land Revenue Code. Provision is also made in section 7 of the Bombay Revenue Tribunal Act, 1939, for the review by the Tribunal of its own orders. It therefore appears that even though there is no express provision in the Bombay Land Revenue Code for review by Government of its own orders, the power is implied in section 211. This power cannot however

~~This power cannot however~~ be exercised to the detriment of any rights acquired by ~~ay~~ any party. In R.L.A.'s opinion No. 6417, dated the 13th August 1938, it was held that as the Collector granted the sanad in form D on the orders of Government itself, it was not possible for Government to take action under section 211. In the present case, the sale of C.T.S. No.409/8, was confirmed on the orders of Government itself in June 1939 and Mr. Khutale has since been put in possession. It would not therefore be open to Government to set aside the sale at this late stage. The transaction is complete. If Government sets aside the sale in order to compromise the suit, it would run the risk of a suit by Mr. Khutale for compensation.

Sd/-
29/5

Remembrancer of Legal Affairs.

M.R.
25/4/56

U.R. to R.D., No.4960, dated 30-5-1941.

Office of the A.L.A.

The facts of the case are that by Government Resolution, Revenue Department, No. 6917 '28) (Confl.).dated 23rd September 1931, land measuring 18acres out of S.No.398-B of the Village of Ainapur in Athni Taluka of the Belgaum District was granted to one Mr. James Arlikatti free of occupancy price subject to special conditions two of which were as follows-

"(3) Restriction on alienation, The land is not to be transferred or alienated nor is any charge to be created upon it without the previous permission in writing of the Collector. Alienations, transfers and charges made contrary to this rule shall be void." and.

"(6) Breach of any of the Conditions will entitle Government to resume the whole or any portion of the grant without payment of any compensation."

2. These special conditions were however not recorded in the Record of Rights. On 27th November 1933,Mr.Arlikatti mortgaged the land to Raja Lakhamgouda Basavaprabhu Desai of Wantamuri for Rs.2,345/-in accordance with the decree in Civil suit No,75 of the 1933of the Court of the Assistant Judge, Belgaum. Mr.Arlikatti failed to pay the decretal amount and the decree-holder, Raja Lakhamgouda Basavaprabhu Desai filed Darkhast No.240of 1936. In exectuion of this Darkhast the Collector sold 13-28 out of the

A. G

P.T.O

~~out of the~~ land to Mr.G.K.Kulkarni, a pleader of Athni for Rs.3,042/- and confirmed the sale by his order No.L.D.R.A. 404, dated 1st December 1939. The restricted nature ~~of the~~ of the tenure was apparently not mentioned in the sale proclamation or noticed by the Collector. Mr.Kulkarni,having obtained possession of the land, purchased privately from Mr.Arlikatti the remaining A. G. 4-12 under a registered Sale Deed for Rs.1,000, Meanwhile on 15th May 1937 Mr, Arlikatti had leased land for 20 years under a registered lease to one Mr. Ganiger. Mr.Ganiger was in possession of the land till the Collector dispossessed him and placed Mr.Kulkarni, the auction pruchaser in possession of it. On being dispossessed

Mr.Ganiger applied to the Collector for a certificate under section 70 of the Land Revenue Code in order to set aside the court sale and the possession of Mr.Kulkarni. The Collector rejected the application. Against that order Mr.Ganiger appealed to the Bombay Revenue Tribunal, but the appeal was dismissed on the ground that whatever the remedy Mr.Ganiger has against Mr. Arlikatti, he had no remedy against Government. Mr.Arlikatti also applied to the Collector to declare void the court sale of 13-28 A G to Mr.Kulkarni as well as his own private sale of the remaining 4-12 A. G Mr.Kulkarni and the lease to Mr. Ganiger. The Collector declined to declare the court sale void, but resumed the 4-12 A G which Mr.Arlikatti had privately sold to Mr.Kulkarni and regranted the same to Mr.Kulkarni on the old tenure. The land given to Mr. Arlikatti was worth Rs.5,040/-on the old tenure. Mr.Kurkarni paid Rs.3,042/-in the court sale and Rs. 1,000/- in private sale. The Commissioner, Southern Division, in paragraph 7 of his letter at page 27 ante states that Mr. Kulkarni may have thought that he was buying on the old tenure, but on the principle of the Bombay Revenue Tribunal's decision in Mr.Ganiger's appeal he was not entitled any consideration on that Account. The Commissioner accordingly recommends that Government should either resume the land or make a compostion with Mr. Kulkarni. He suggests that if Mr.Kulkarni fails to make a composition the Collector's

connection the Collector's order regrating A G 4-12 to him may be cancelled and the Civil Court sale be set aside under section 70(b) of the Bombay Land Revenue Code. The Revenue Department doubts the applicability of section 70(b) to this case, but is of the view that the Collector's order of 1939 confirming the sale of A G 13-28 can be revised by the Commissioner under section 211, Bombay Land Revenue Code. The questions which arise for the R.L.A.'s consideration are:-

(1) whether Government can resume the lands now in the possession of Mr. Kurkarni, and

(2) whether the jurisdiction in revising the Collector's order of 1939 lies with the Commissioner (i.e. Government) or the Bombay Revenue Tribunal

3. As regards the court sale of A. G. 13-28 to Mr. Kulkarni M.RD

in pursuance of a decree these lands could have been resumed by first moving the court to set aside the sale under section 70(b) of the Bombay Land Revenue Code. This section provides inter alia that the court on receipt of a certificate from the Collector that the occupancy is not transferable without his previous sanction and that such sanction has not been granted shall set aside any sale of such occupancy. In the present case, however, as the salex was held by the Collector himself the Court will in all probability hold that the requisite sanction was impliedly granted by the Collector. It is therefore very doubtful whether an application under section 70(b) would succeed at this late stage. In any case such application to the court can only be made by the Collector himself and not by Government.

4. As regards A.G 4-12 privately sold by Mr. Arlikatti to Mr. Kulkarni and subsequently resumed by the Collector and regranted to Mr. Kulkarni, the Collector's order in that connection can be revised under section 211 of the Bombay Land Revenue Code. The power of revision however rests with the Bombay Revenue Tribunal and not with Government as the case is clearly a revenue case. It is true that the Commissioner can suo motu take action under section 211,(seeR.L.A.'s No.2795,dated 26th March 1940), but it would not be advisable to ask him to do so in view of the fact that the Revenue Tribunal has already been dealing with appeals from this

~~from this~~ very case. If Government is of opinion that the Collector's order in regard to A. G. 4-12 should be reversed or modified, the most suitable course would be to ask the Revenue Tribunal to hear the Government Pleader on Behalf of Government before disposing of the appeal filed by Mr. Arlikatti.

Sd/- 11/7

Remembrancer of Legal Affairs.

M.R
25/4/6

U.R. to R.D., No, 6096, dated the 18th July 1941.

Office of the R.L.A.

R.L.A.'s opinion No.11630, dated 7th November 1939, regarding the period of the lease being in excess of the permissible limit was based on the assumption that the lease was granted under rule 51 of the Land Revenue Rules, 1921. Revenue Department has now pointed out that the assumption is not correct as rule 51, when read with rule 48, is applicable only to certain specified city surveyed areas which do not include Karad. In the circumstances, the period of the lease cannot be held to be in contravention of rule 51(2)(a).

2. The question now arising for consideration is whether the lease can be cancelled under section 211 of the Bombay Land Revenue Code. That section provides inter alia that the provincial Government or any Revenue Officer, not inferior in rank to an Assistant or Deputy Collector or a Superintendent of Survey, may call for and examine the record of any enquiry or the proceedings of any Subordinate Revenue Officer for the purpose of satisfying itself or himself as to the legality or propriety of any decision or order passed; and that if in any case it shall appear to the Provincial Government or to such Officer aforesaid that any decison or order or proceedings so called for should be modified, annulled or reversed, it or he may pass such order thereon as it or he deems fit. The amplitude of

The amplitude of these powers has been emphasised by the High Court in parappa vs.Secretary of State, vs.(P.J.) 1891, page 230 and by the Privy Council in Secretary of State vs. Mulkar (36Bom.L.R.242). But in a more recent Bombay case (Second Appeal No.807 of 1937)Kania J.has held that section 211 could not be made use of in order to affect contracts concluded between Government and a tenant. Though an appeal under Letters Patent has been filed in the High Court against the decision of Kania J., it would be advisable to abide by that decison pending the result of that appeal.

3. Furthermore, this would appear to be a "revenue case" and consequently it is extremely doubtful whether Government would have jurisdiction to revise the Collector's order (see section 4 of the Bombay Revenue Tribunal Act). If, therefore, Government come to the conclusion that the lease should be cancelled, the more appropriate course would be to ask the Commissioner to call for the papers and revise the Collector's order under section 211 of the Land Revenue Code. It may also be pointed out that the plot in question can be cleared of all structures by the Collector taking action under condition 2 of the lease.

Sd/-
19/6/41

Remembrancer of Legal Affairs.

U.R. to P.W.D., No 5533 ,dated the 23rd June 1941.

N.R.D.
25/4/86

Office of the R.L.A.

The bed of the river Tapti vests in Govern ment under section 37(1)of the Land Revenue Code, 1879, and the removal of sand therefrom would be governed by the provisions of rule 66 of the Land Revenue Rules,1921. Section 30(1) of the ports Act,1908 which deals with the remo- val of stones, sand etc.from any part of the bank of shore of the port does not seem to have any bearing in respect of removal of sand from the bed of the river. Consequently the proper course appears to be that the Collector should take action against the contractor of the Sachin State under the Land Revenue Code for for unauthorised removal of sand from the bed o of the river. The view that the Collector can take action under section 37 of the Land Revenue Code read with rule 66 of the Land Reve- nue Rules, taken in R.D.office note at P.175 ante appears to be correct.

Sd/-
25/9

Remembrancer of Legal Affairs.

U.R. to R.D., No.8459 dated the 26th September 1941.

M.R.D.
25/4/56

Office of the R.L.A.

The question for consideration of thex R.L.A. is whether by virutue of section 135(I) of the Land Revenue Code, 1879, it is obligatory on a superior holder to produce extracts from the Record of ~~Rightsxx~~ Rights in support of his claim.

2. Section 135(I) of the Land Revenue Code, 1879, provides that notwithstanding anything in section 87 the Collector shall refuse assistance to any superior holder under the said section if his claim to such assistance is not supported by an entry or entires duly made in the record of rights, register of mutations or register of of tenancies. Although the Collector who entertains a claim to assistance under section 87 is not a Court, the principle contained in section 101 of the Evidence Act applies and if the claim made by the superior holder is denied by the inferior holder, it would be for the superior holder ~~is denied by the~~ to prove his claim by producing felevant extracts from the record of rights, register of mutations or register of tenancies; otherwise the Collector shall refuse assistance. There is no obligation on the Collector to call for and examine the village records for the purpose. Consequently although it is not obligatory that a claim to assistance should be accompained by extracts from the record of rights, it would be necessary for the superior

~~the superior~~ holder, on the claim being denied by the inferior holder, to produce the extracts from the record of rights in support of his claim.

Sd/-
24/9

Remembrancer of Legal Affairs.

U.R. to R.D.,No,8462,dated the 26th September 1941.

M.R.D.
25/4/56

Office of the R.L.A.

Leases which are to be continued "till relinquished" or "as long as possession is retained" are in the nature of permanent leases (see R.L.A.'s opinions No.6128, dated 23rd November 1937 and No,122 ,dated 5th January 1939). Consequently the Collector's action in fixing the the period of such leases, say for 50 or 99 years is clearly wrong. It is for R.D. to decide whether the Collector's orders in such cases should be revised otherwise than on application by the persons concerned. If it is decided to take action in such cases, since these cases arexlikely to be held to be revenue cases, it would be advisable for Government to ask the Commissioner to revise the orders of the Collector under section 211, Land Revenue Code, so that the question of the jurisdiction of the Bombay Revenue Tribunal may not arise.

2. Leases which are continuable " till Government requires it" or "during the pleasure of Government" can be terminated by Government at any time.

Sd/-
26/7

Remembrancer of Legal Affairs.

U.R. to R.D., No,6618, dated the 28th July 1941.

M.R.D.
25/4/56

Office of the R.L.A.

The question for consideration of the R.L.A. is whether the Inamdars who executed agreements before the Land Revenue Code, 1879, was amended by Bombay Act XX of 1939 can claim to have revision settlement operations continued according to the Bombay Land Revenue Code as it stood before it was amended by Bombay Act XX of 1939.

2. Sub-section(2)of section 216 of the Bombay Land Revenue Code provides inter alia that the provisions in Chapters VIII, VIII-A IXand X shall not be applied to alienated villages except when the extension of the provisons is authorised by the Commissioner acting on the written application of the holder. Before the survey rates are introduced in an alienated village an agreement is required to be taken from the alienee binding himself and his successors to pay the village officers who are not paid by Government (Joglekar's Land Revenue Code,pages 645-646). The form of the agreement sanctioned by G.R.R.D., No.4011, dated 9th May 1892, will be found printed as Appendix XXVII at page 644 of Joglekar's Code. The preamble to the agreement recites inter alia that in the event of the application (under section 216) being granted, Government undertakes. Onpondtions of the Inamdar's agreeing to the stipulations contained in the agreement, to bear the cost of the survey and settlement as well on the first occasion of the same being effected after the date of the agreement

~~of the agreement~~ as also thereafter whenever any revision survey or settlement is introduced by order of Government according to law into the village. It appears that agreements in these forms have been executed by Inamdars before 1939; and the question is whether according to these agreements the Inamdars can claim to have settlement operations continued according to the Code as it stood before the amendment of 1939. The liability imposed on Government by the agreements is that on the Inamdar's application under section 216 being granted Government should bear the cost of the survey and ~~settlement~~ settlement (Whether original or revison) effected according to law.

The word' according to law' must be interpreted to mean according to the law as it stands from time to time. Moreover the relevant provisions of Chapter VIII having been repealed, no settlement can now be effected in accordance with those provisions. If therefore any settlement has to be made, it must be in accordance withthe law as it stands today.

2. Under sub-section(2) of section 216 of the Bombay Land Revenue Code no provision of Chapters VIII, VIII-A IX and X can however be applied to the alienated villages in question unless the extension of the provision is authorised by the Commissioner acting on the written application of the holders of the villages concerned. In the cases under consideration, the Inamdars have not applied and have not agreed to the extension of the provisions of Chapter VIII-A to the villages in questio question. Consequently the provisions of this Chapter do not apply to these villages. It will therefore not be possible to introduce any settleme ment in these villages in accordance with the new provisions of the Land Regenue Code: this can only be done if the Inamdars agree to the extension of the new provisions to their villages.

4. The postion therefore is that unless the Inamdars agree to the applifation of the provision of Chapter VIII-A to their villages, no settlemen can be introduced in these villages in accordance with the provisions of the Land Revenue Code

~~Land Revenue Code~~ as they stand today. It is not possible to make any settlements in accordance with the old provisions of the Land Revenue Code as the relevant provisions of Chapter VIII have been repealed and are no longer in force. If, therefore, any settlements are to be introduced in such villages, it will be necessary to take fresh agreements from the Inamdars agreeing to the application of Chapter VIII-A to their villages. If they are not willing to execute such agreements, the only course would be to leave matters as they are, for the old agreements executed by them have, in so far as they relate to the introduction of settlements in their villages, now become impossible of performance.

Sd/-
18/11

Remembrancer of Legal Affairs.

U.R. to R.D., No.9946, dated the 19th November 1941.

M.R.D.
25/4/6

Office of the R.L.A.

In the absence of any clear provision in the lease providing for power of Government to recover rent asxarrears of land revenue the provisions of of Chapter XI of the Bombay Land Revenue Code,1879, cannot be resorted to for the recovery of arrears of rent thereunder(see R.L.A.'s opinions No,4857, dated 29th August 1931, No. 3211, dated 30th May 1934.). The lease in the present case is not forthcoming. A condition for recovery of rent as arrears of land revenue is not one of the condtions subject to which the lease was sanctioned by Government under Government Resolution(Revenue Department) No. 11716, dated 2nd December 1909. The mere fact that the previous lease contained a provision for the recovery of rent as arrears of land revenue would not be a sufficient justification for assuming that a similar provision must have, infact, been incorporated in the lease executed in prusuance of the sanction accorded by Government under Government Resolution(Revenue Department)No.11716, dated 2nd December 1909 and acting upon such assumption. Consequently, instead of taking the risk of recovering the arrears of rent under the provisions of the Bombay Land Revenue Code on the mere assumption that the lease does contain a condition permitting such rewovery,it would be safer and desirable to take steps to enforce the Government's claim though the process of a civil Court.

Sd/- 18/11

P.T. O.

Remembrancer of Legal Affairs.

U.R. to R.D.,No.9962 ,dated the 19th November 1941. M.R.D. 25/4/56

Office of the R.L.A.

Statement of the case for the Advocate General's opinion

Vide P.67 ante.

1. At the instance of the Ahmedabad Borough Municipality, certain surplus lands consisting of building sites held revenue free which abutted on the Kalupur Relief Road, were acquired by Government under the Land Acquisition Act, 1894. From the note prepared by the President, Ahmedabad Municipality, it appears that the land described as "surplus land" measuring 30,622 sq.yards was acquired for the formation of the street. In addtion to this area, another portion of land measuring 2,150sq.yards was also available for disposal. The land thus available for sale came to be 32,572sq.yeards. It is thus clear that the plots proposed to be sold by the Municipality are formed out of two kinds of land, viz,(1)land acquired by the Municipality for formation of the street and (2) land forming part of the public street vesting in the Municipality(see Commissioner's report at P.111 ante.). The main contention of the Municipality is that as prior to the acquisition of the lands, they were held revenue free under section 128 of the Bombay Land Revenue Code,1879, that exemption continued and the acquisition proceedings did not extinguish the concession which was attached

Vide para. 11 at PP. 73-75..do..

Office of the R.L.A.

Vide para,36-37 and PB-105-107 ante.

to the lands. The Municipality also contends that by virtue of the terms of the agreement executed between the Municipality and Government, the lands would would continue to be exempt from payment of assessment.

2. On the above facts, the questions for consideration are:-

(1) Whether the purchaser of the plots would be liable to pay non-agricultural assessment to Government;

(2) Whether there is any legal objection to Government accepting the proposal that the sale of eight plots should be confirmed by the Commissioner under section 48(2)of the Bombay Municipal Boroughs Act,1925,free of assessment, and if it be subsequently held that assessment is legally leviable on these lands, the Municipality should pay the assessment to Government.

(3) The first question pertains to levy of assessment after the sale of lands which prior to their acquisition were exempt from payment of land revenue under section 128 of the Land Revenue Code, 1879, In the case of C.Hannmanta Pantulu vs. The Secretary of State for India in Council (I.L.R. Mad.373), the Madras High Court held as follows:-

"Even an Inam land which is subject only to a quit rent becomes when acquired by Government under the Land Acquisition Act, ordinary Government land liable to assessment in the hands of any person who might afterwards become the occupier Whether deriving his title directly from the Government or from a municipality.

P.T.O.

~~from the Government of from a municipality~~, which after such acquisition by Government becomes owner under section 279 of the.

(3)

Madras District Municipalites Act (IV of 1884) by payment of the amount settled as compensation. Acquisitio is only by the Government and not by the Municipality, hence the previous Inamdar's right to exemption from assessment does not vest in the municipality. A transferee from the municipality of such land cannot therefore claim as against the Government exemption from assessment. A person who claims exemption from the pay ment of such assessment as Government may fix must show some grant exempting him from the the payment of the ordinary assessment. No exemption can be claimed without a grant or exemption in express words."

The present case seems to be fully covered by the aforesaid decision of the Madras High Court and consequen ly, the lands, though orginally exempt from assessment under section 128 of the Bombay Land Revenue Code, 1879, became, after acquistion, ordinary Government lnds liabl in the hands of subsequent private transferees from the Municipality, to payment of assessment. The contention of the Municipality that after acquistion the lands will continue to enjoy exemption from assessment is not tenable(see R.L.A.'s opinion No.2571,dated 14thMay 1937).

PP. 97-99 of L. R. File O.Misc./1937.

4. It is, no doubt, true that the Municipality and Government have executed an agreement in the form prescribed in paragraphs 80 of the Manual of Land Acquisition for the Province of Bombay at page 23 in respect of the acquistion. of these lands. That agreement provides:

"The Secretary of State doth hereby agree with the Municipality that as soon as all the costs and charges of the said acquisition shall be paid by it.....the said land.....shall vest in the Municilaity and be thence

forth held by it for the purposes of the Municipa Act like any other property vested in the municipality under section 63 of the Municipal Act free of all claim or charge whatsoever on the par of Government." It is clear from this conditions in the agreement that the land would be free of a all claim or charge(i.e.assessment) whatever on th the part of Government so long as it vested in the Municipality like any other property vesting in it under section 63 of the Bombay Municipal Boroughs Act, 1925, That section provided for power of a Municiplaity to acquire and hold property for the purposes specified inblauses(a) to(f)of sub_section(2). The Ahmedabad Municipality, however, proposes to sell these lands under section 114(1) as they are no longer required for purposes of the Act. On sale, these lands would cease to be held or used by the Municipality for the proposes of the Act and consequently the benefit of exemption from payment of Government assessment under the agreement cannot be claimed by purchasers from the Municipality. The contention of the Municipality that these lands would by virtue of the agreement continue to be exempt from assessment even after sale is not therefore tenable.

5. So long as the decision in I.L.R. 36 Mad. 373 has not been dissented from, it must be considered to be good law. Moreover, the right to levy assessment is a prerogative of the Crown, and if the user of the land changes, as will be

~~as will be~~ the case after sale of these lands by Municipality, it would be unreasonable to hold that Government have lost their right to assess (see Collector of Bombay v. Kamala Vahooji, 36 Bom. L.R. 297) It seems that the analogy of a trustee and his beneficiary referred to at pages 101-103 ante, ought not to be applied to statutory proceedings. Government is strictly speaking not at all a trustee for the Municipality in the acquisition proceedings. It only discharges certain statutory functions. The land may originally have been land liable to the usual revenue assessment or may have been inam and as such subject to reduced assessment or to quit rent or it may even have beenn rent free by custom. However, upon acquisition by Government all the rights and privileges in respect of that land which had formely vested in the predecessors-in-title vest in Government and all such titles are therefore merged together so that the land vests absolutely in Government. Thereafter the Government is free to dispose of that land as any other ordinary Government land and such disposal would normally be in favour of the party for whose benefit the acquistion proceedings had been undertaken in terms of the relevant agreement. This result seems to follow from the statutory proceedings under the Land Acquisition Act. The terms of the agreement rehied upon by the Municipality in this case cannot, it appears, be held to amount to conferring any perpetual freedom from levy of assessment irr-e-

levy of assessment irrespective of whether the land is or is not used for public or municipal purposes and also to permit the Municipality to transfer any such privilege at the time of selling the lands in question to private parties. It appears therefore that there is no substance in any of the contentions of the Municipality.

6. As regards the second question, under section 136(1) of the Bombay Land Revenue Code, 1879, the occupant of any unalienated land is primarily liable to pay assessment and under section 150(b) an arrear of land revenue can be recovered by forfeiture of the occupancy. If the Commissioner sanctions the sale of these eight plots free of assessment subject to the condition proposed by the Municipality, it would lead to legal difficulties at the time of enforcing the demand for assessment levied in pursuance of such a condition in the sanction and in fixing the liability for such demand as between the occupant and the Municipality. Such a result would not be desirable from the point of view safeguarding the interests of Government. The Municipality may, on its own part, however, agree to indemnify the pruchasers, if it so desires, that in the event of any lawful levy of assessment by Government at any time hereafter such levy should not fall on the purchasers but should be borne by the Municipality.

7. As the points involve important

issues and the matter is likely to be taken to a Court of law, the Advocate General is requested to be so good as to give his opinion on the point raised by the Secretary, Revenue Department at pag 179ante as further clarified by the letter from the President, Ahmedabad Municiplaity received in the Revenue Department on 10th December 1941.

Sd/-
15/12

Remembrancer of Legal Affairs.

U.R. to the Advocate General, No.10826 dated the 15th December 1941.

M.R.D.
26/4/56

The main question for consideration is whether, in law, notwithstanding the acquisition proceedings, the holders of the plots as on a pruchase from the Municipality would be firee from the levy of non-agricultural assessment.

2. Under section 45 of the Land Revenue Code, 1879, all land is liable to the payment of land revenue except such as may be exempted under the provisions of any special contract with the Crown or any law for the time being in force, Section 128 of the Code provides that the existing exemption from payment of land revenue shall be continued in the cases of lands therein mentioned. The holders of the plots in question appear to have received Sanads under section 13 of the Code, presumably in the Form in Schedule H to the Code.

3. Having regard to the language of section 128 it is contended that once certain lands fal within that section, immunity from assessement becomes a characteristic or a feature of these lands by reason of the statute and as the words of the section "shall be continuted" are imperative, this characteristic or feature remains attached to the land, whatever the dealings with and in whosoever's hands the lands, may be. This in substance seems to be the argument contained in paras 36 and 37 of the letter of the Municipality at PP 105and 107 of the file.

4. ~~At first sight the argument above mentic~~

[P.T.O.]

4. At first sight the argument above mentioned seems tobe a plausible one butm a closer examination of section 128 and the following sections shows that it is not well founded. The Crown has a prerogative to levy assessment under section 45 of the Act. Some lands are exempt from payment of such revenue by reason of a grant and subsequent sanads given by the Crown. The position would seem to be that the exemption would continue only so long as the the grant and sanads continue in force. The moment the Crown itself becomes the owner of the land as a result of acquisition,

by it, the grant and the sanads come to an end and the right to exemption based on it must become extinct. In my view, therefore, notwithstanding the language of section 128, if land falling under the exemption created by that section becomes ves vested in Government, the exemption would come to an end. Thereafter these lands could not be still said to have the characteristic or feature of being revenue free.

5. I do not agree with the theory put forward by the Municipality in regard to the effect of sections 16 and 50 of the Land Acquisition Act in paragraphs 21to 31 of their letter at PP 93 to 103 of the File. Under that Act on acquistion the land becomes clearly vested in Government. In cases where the acquisition is on behalf of a company or a local authority, the Government may on certain conditions being fulfilled transfer the property vested in it to the company or the local authority. This position is clearly supported by the case in 36 Madras 373.

6. The postion would, therefore, appear to be that notwithstanding the land being previously free of revenue and the terms of section 128 of t Code, Government are entitled to levy assessment on these plots.

7. The further question which arises is wheth this being so, the terms of the agreement between itand the Municipality prevent Government from

P.T.O.

~~Government from~~ levying the assessment. I donnot think it does. I agree with the construction put on the agreement by the R.L.A. in paragraph 4 of his Note. What the Government agree to is that the land will be held by the Municipality "free of all claim or charge whatsoever on the part of the Government" So long as the Municipality continue to hold it for the purposes of the Municipal Act.

8. I therefore agree with the view of the R.L.A. that the contention of the Municipality that the lands would, in the the events that have happened, continue to enjoy exemption from assessment even in the hands of purchasers from the Municipality is not tenable.

9. I agree also with the view of the R.L.A. in para 6 of his Note. The sanction to the sale by the Commissioner of the plots free of assessment in the manner proposed by the Municipality may lead to complications hereafter. The better course would be a contract between purchasers and the Municipality by which the Municipality may indemnify the purchasers in respect of the assessment, if any, hereafter levied by Government.

URD.
26/11/56

Sd/-

Advocate General.
20/12/41

Office of the R.L.A.

A copy of the Advocate Generalis opinion No.10 dated 20th December 1941 along with a copy of the Statement of the Case is forwarded herewith.

Sd/-
22/12

Remembrancer of Legal Affairs.

M.R.D.
26/4/56

U.R. to R.D., No. 11067, dated 22nd December 1941.